

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.MC.No. 3214 of 2007()

SC.336/2006 of ASSISTANT SESSIONS COURT, NEYYATTINKARA

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PETITIONER: ACCUSED

RAMESHKANT ALIAS SANTHOSH,
AGED 33, S/O.KRISHNAN, SUJATHA BHAVAN,
KARALI, PARASSALA DESOM, PARASSALA VILLAGE.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.
2. SUMESH KUMAR, S/O.NARAYANAN NAIR,
KEEZHE PARUTHI VEEDU, MUNDAPLAVILA,
CHERUVARAKONAM, PARASSALA DESOM, DO. VILLAGE.
3. SANDHYA RAMESH, D/O.VASANTHA KUMARI,
KEEZHE PARUTHY VEEDU, MUNDAPLAVILA,
CHERUVARAKONAM, PARASSALA.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI. JIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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Crl.M.C. No. 3214 Of 2007
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Dated this the 29th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution for offence punishable under Sections 376 and 366(A) IPC. The said proceedings have been initiated against the petitioner on the FI statement lodged by the 2nd respondent. The 3rd respondent is the sister of the 2nd respondent. Respondents 4 and 5 are the parents of respondents 2 and 3. Crime No.109/2003 of Parassala Police Station was registered on the basis of the complaint lodged by the 2nd respondent herein. He had raised the allegation that his sister (R3) was missing. She was alleged to be aged only 17 years. Investigation was conducted by the Police and thereafter final report was filed. Cognizance was taken on such final report for offences punishable under Section 366 (A) and 376 IPC. Committal proceedings was registered against the petitioner before the Judicial First Class Magistrate Court -II Neyyattinkara. The order of committal has been passed. The learned Assistant Sessions Judge Neyyattinkara has already taken cognizance and the matter is pending before the learned Assistant Sessions Judge as S.C.No.336/2006.

2. It is at this stage that the petitioner- accused and the

respondents 2 to 5 have come before this Court with this petition under Section 482 Cr.P.C. It is prayed that the powers under Section 482 Cr.P.C may be invoked and the proceedings against the petitioner may be quashed.

3. What is the reason? It is submitted that all the disputes between the petitioner on one hand and the respondents 2 to 5 on the other have been settled amicably. As a matter of fact, the 3rd respondent was in love with the petitioner. It was not a case of the 3rd respondent missing. She had eloped along with the petitioner. They have subsequently got married. There were initial resistance on the part of the other respondents- brother in law and parents in law of the petitioner. They have also ultimately come around . They have accepted the marriage. Legal marriage has already been performed between the petitioner and the 2nd respondent. Spouses now live together as husband and wife and a child has been born in the wed lock. The marriage has been accepted by all in the family including respondents 2,4 and 5. In these circumstances, continuance of the prosecution under Section 366A and 376 amounts to an unnecessary irritant and causes difficulties for all concerned. This leads to failure and miscarriage of justice. It is, in these circumstances, prayed that

the settlement between the parties may be legally recognised. The composition by the respondents 2 to 5 may be accepted and all further proceedings may be brought to premature termination.

4. Respondents 2 to 5 have entered appearance before this Court through counsel. They have filed applications for composition. The counsel for the respondents vouches for the fact that there has been such settlement and composition. The petition has been signed by respondents 2 to 5 and counter signed by counsel for the respondents.

5. I am satisfied from the submissions made at the Bar, from the joint statement filed by the parties and the averments in the Crl.M.C that the parties have willingly and voluntarily settled their disputes amicably. As against the petitioner the disputes have been settled and offences allegedly committed by him have been compounded by the respondents 2 to 5.

6. If legally permissible, I am satisfied that the composition can be accepted and the proceedings against the petitioner in S.C.No.336/2006 can be brought to premature termination. However, the offence under Sections 376 and 366A I.P.C are not declared by law to be compoundable, But now it is accepted that the petitioner

and the 3rd respondent were in love and they had eloped . Since the 3rd respondent was above the age of consent on the relevant date and had sexual intercourse with the 3rd respondent admittedly with her consent, the prosecution cannot lie under Section 376 IPC. There is no allegation that the petitioner had taken 3rd respondent to compel her to have sexual intercourse with anyone else. Respondents 4 and 5, legal guardians of the girl, who are competent to give her in marriage to the petitioner have accepted and given consent to the marriage between the petitioner and the 3rd respondent. It is submitted that legal and valid marriage has been performed by the petitioner and the 3rd respondent, approved by all the relatives. The decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. is authority for the proposition that the interests of justice may at times transcend the interests of mere law. That decision is authority for the proposition that the powers under Section 482 Cr.P.C are not fettered by the stipulations of Sec.320 Cr.P.C. In an appropriate case like this to do justice beyond the law, it is quite permissible for the High Court to invoke its powers under Section 482 Cr.P.C

7. Having considered all the relevant inputs in this case including the joint statements made by the respondent 2 to 5, I am

satisfied that this is an eminently fit case where the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] can be invoked in the interests of justice.

8. In the result, this Criminal Miscellaneous Case is allowed. S.C.No.336/2006 pending before the Assistant Sessions Judge-Neyyattinkara against the petitioner herein under Sections 366(A) and 376 IPC is hereby quashed.

(R.BASANT, JUDGE)

sj